

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re K.B. et al., Persons Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.C. et al.,

Defendants and Respondents;

S.B. et al.,

Appellants.

E047557

(Super.Ct.No. J219745-46)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. James A. Edwards,  
Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Appellants.

Ruth E. Stringer, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel,  
for Plaintiff and Respondent.

Michael D. Randall, under appointment by the Court of Appeal, for Defendant and Respondent S.B.

Brent Riggs, under appointment by the Court of Appeal, for Defendant and Respondent R.C.

## I. INTRODUCTION

Two brothers, S.B. and Ka.B., appeal from the juvenile court's dispositional order granting reunification services for their mother R.C. (Mother). The court found Mother had negligently caused the death of the children's special needs brother, Ke.B. (Welf. & Inst. Code, § 361.5, subd. (b)(4)),<sup>1</sup> in part by failing to maintain adequate medical care for the child, but further found that offering her reunification services would serve the best interests of her other children, S.B. and Ka.B. (§ 361.5, subd. (c)). S.B. and Ka.B. claim that insufficient evidence supports the court's best interests finding. We disagree, and affirm the dispositional order.

## II. FACTS AND PROCEDURAL HISTORY

### A. *Background*

S.B., Ka.B., and their special needs brother Ke.B. first came to the attention of the San Bernardino County Children and Family Services (CFS)<sup>2</sup> in February 2008. Ke.B. was born in December 2002 and was five years old at the time. S.B. was born in March

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> CFS was formerly known as San Bernardino County Department of Children's Services.

2002 and was nearly six years old. The youngest of the three children, Ka.B., was born in August 2007 and was only six months old.

Ke.B. had “total body involved cerebral palsy” with “severe contractures of all four extremities,” “poor head control,” and “poor motor skills.” Throughout his life, he was nonambulatory and nonspeaking. He was slow to eat and slow to respond to feedings. He had the developmental abilities of a five month old. He also had mild asthma.<sup>3</sup>

The staff at Ke.B.’s special needs school noticed that, between February 7 and 12, 2008, Ke.B. had lost two pounds, more than 10 percent of his body weight. He weighed 19 pounds on February 7, and only 17 pounds on February 12. During this period, he was in the care of Mother, although he was fed twice each day at the school. In addition to his weight loss, he appeared to be lethargic and dehydrated, and was breathing slowly. The school staff was unable to reach Mother, and contacted CFS.

Mother later arrived at the school and a social worker and public health nurse spoke to her regarding Ke.B.’s condition. Mother was “very defensive” and fluctuated between crying and displaying angry outbursts toward the social worker. She said Ke.B. had eaten a bowl of oatmeal that morning and drank some fluids from a sippy cup. She had not noticed any change in his behavior or weight. She had last taken him to a doctor

---

<sup>3</sup> In March 2004, Ke.B. was hospitalized for pneumonia, and nurses reported having severe difficulty in feeding him. During 2004, there were three referrals for possible child neglect of Ke.B., but each were deemed unsubstantiated. In September 2005, Ke.B. was hospitalized with dehydration following repeated episodes of diarrhea. At that time, he weighed only 20.8 pounds, below the third percentile for his age. He had “sluggish oral intake” and could not roll over.

in August 2007, the same doctor who had been monitoring his condition since his birth. She did not have any contact information for the doctor.

Mother had explored the possibility of having Ke.B. fitted with a gastric feeding tube but had not pursued it. A gastric feeding tube is inserted through a small incision in the stomach, and is used when the patient is malnourished and cannot orally consume enough food in order to maintain body weight. This was the case with Ke.B. According to the public health nurse, Mother had not been following through with referrals or doctor appointments required to obtain services for Ke.B. He did not have any special equipment to assist with his disabilities, and he was not receiving any services from California Children Services or Inland Regional Center.

When asked why she had not pursued the services that Ke.B. required, Mother said she had only recently moved to the high desert to live with family members and to get away from the children's father, S.B. (Father), who was very violent and was on probation for beating her. She had been unable to obtain services due to "changing counties." She said she was doing the "best she [could]" but Father's violence did not help.

Mother had been married to Father since 2001 and had been in a relationship with him since 1998.<sup>4</sup> They stopped living together in mid-2007 and Mother moved to the

---

<sup>4</sup> Mother was born in 1980 and lived with her mother until 1986, when she and her siblings went to live with an aunt. Her father used alcohol and drugs, and often came to her mother's home and engaged in domestic violence. When Mother's mother died in 1992, Mother had not seen her father since 1986. Mother began using drugs and alcohol during high school, and began seeing Father in 1998. Father was born in 1979.

high desert to get away from him. Mother said Father had never supported the children and regularly demanded she pay him \$400 per month or one-half of the \$763 in social security benefits she received for Ke.B.'s disability. She received no food stamps or cash aid, because Father had discouraged her from applying. She had a restraining order against Father, but he called her daily, threatened her, and told her how useless she was.<sup>5</sup> The children had last seen Father on New Year's Day 2008.

The social worker interviewed S.B. during the afternoon of February 12. S.B. did not have any disabilities, appeared healthy, and was very articulate for his young age. He told the social worker he lived with Mother and his two brothers. Mother was "a good mother" and his uncle helped the family. He said "mommy gets frustrated with [Ke.B.] when she has to feed him, [Ke.B.] takes a long time to feed and sometimes he crie[s], I try to help mommy with [Ke.B.] so she can take care of [Ka.B.]" Ka.B. was born in August 2007 and was then six months old. When asked whether he had ever seen his parents fight, S.B. said, "no, they do not fight, daddy hits mommy in the face and she cries and tries to hide." S.B. then began to cry, and the interview was terminated.

On February 13, CFS held a team decision meeting with Mother present. It was explained to Mother that CFS was concerned for the safety of S.B. and Ka.B. due to the

---

<sup>5</sup> Aside from their domestic violence problems, neither Mother nor Father have a violent criminal history. In 2005, Father was convicted of burglary and was placed on probation. He claimed this conviction was based on a shoplifting incident. In October 2006, January 2007, and April 2007, he was arrested for spousal abuse. Also in April 2007, he was found to be in violation of his probation, served several months in jail, and was released in late August 2007. Mother was booked for forgery in February 2006. She claimed this incident involved a bounced check for which she had made restitution.

domestic violence between Father and Mother and Ke.B.'s current medical condition. S.B. and Ka.B. were placed in a temporary shelter care, and Mother was cooperative with this decision. At the meeting, Mother provided the social worker with verification that services from California Children Services had been reinstated and she had made appointments with a local pediatrician for all of the children. S.B. and Ka.B. were returned to Mother's care on February 15, pursuant to a family maintenance plan.

Ke.B. was taken to a local hospital on February 12. The hospital determined he required a higher level of care, however, so he was transferred to Children's Hospital of Orange County (CHOC) on February 13. He was admitted to CHOC for "medical/nutrition rehabilitation secondary to severe failure to thrive." Mother visited him in the local hospital before he was transferred to CHOC, and instructed hospital staff on techniques for feeding him. The staff reported that Mother "appeared to know her child very well" and was able to get him to eat from a spoon.

On February 22, Ke.B. was discharged from CHOC to Mother's care. Throughout his stay at CHOC, he was "gaining weight well taking good oral feeds," but at the time of his discharge his weight and nutrition were still not "up to par." On February 18, CHOC recommended that Ke.B. be fitted with a gastric feeding tube. In addition, his discharge form included "Special Instructions" that he be seen weekly by his pediatrician, and that a home health nurse visit him twice each week in order to monitor his weight. Immediate medical attention was to be sought if he did not eat, was not gaining weight, or if other symptoms worsened. He was also to be seen at a gastrointestinal and spasticity clinic. There was no signature on the instructions indicating who, if anyone, had received them.

CFS filed petitions for all three children in February 2008. In March, the court sustained allegations that Mother had a history of domestic violence with Father and an inability to provide adequate or appropriate medical treatment for the children during times of domestic stress, and declared the children dependents. The children remained in Mother's care pursuant to a family maintenance plan. Father was granted reunification services and supervised visitation.

CFS believed the children would be safe in Mother's care because it intended to "closely monitor" Ke.B.'s medical care, which was its "chief concern," and ensure that Mother was "following through on all treatments." It is evident from the record, however, that Mother did not follow through on all recommended treatments for Ke.B., and CFS did not ensure that she did. Ke.B. did not see his pediatrician weekly during the months following his discharge from CHOC, a home health nurse did not visit the home twice each week as CHOC had recommended, and Ke.B. was never fitted with a gastric feeding tube.

On March 25, Mother took Ke.B. to his pediatrician because he was coughing and showed signs of congestion. She scheduled appointments with a gastrointestinal specialist at Loma Linda Medical Center on April 30 and July 1. The record is unclear whether Mother kept the April 30 appointment, but she did not keep the July 1 appointment because she claimed she did not have money for gasoline. A rehabilitation appointment was scheduled for August 5. Ke.B. had a breathing treatment system at home.

Mother became pregnant with her fourth child in late June 2008. At that time, she and the children were living in an apartment in Victorville with her sister, the children's maternal aunt (Aunt), and Aunt's six-year-old daughter. A boyfriend of Mother also lived in the apartment until June 2008. A new boyfriend, D.P., then began living in the apartment. The identity of the father of Mother's fourth child is not indicated in the record.

*B. Ke.B.'s Death on July 3, 2008*

At 1:16 p.m. on July 3, 2008, Mother called 911 from her apartment and reported that Ke.B. was not breathing. A sheriff's deputy arrived several minutes later. Mother and others were attending to Ke.B. on the kitchen floor. He was not breathing and was in full cardiac arrest, so the deputy began to administer CPR. Ke.B. was rushed to a local hospital by paramedics, and was pronounced dead at 1:54 p.m. The cause of death was unknown pending an autopsy.

Mother said she had left home around 9:30 a.m. to attend a parenting class and left the three children at home with Aunt. She returned home shortly before noon, and found Ke.B. lying in his bed smelling of feces. As she picked him up to clean him, he appeared to breathe his last breath. Aunt said she left the apartment around noon to buy groceries and returned within an hour. Mother returned to the apartment around 1:00 p.m., while Aunt was putting groceries away.

When the deputy who responded to the 911 call approached Mother's apartment, he smelled a strong odor of marijuana smoke coming through the front door. Later, when the deputy walked into the bedroom where Mother said she found Ke.B., he smelled an



even stronger odor of marijuana smoke. During an interview, D.P. told the deputy he had been smoking a marijuana cigarette in the bedroom where Ke.B. had been sleeping. Aunt reported that D.P. had been in the bedroom with Ke.B. for around an hour before the child was found. The bedroom door had been closed in order to cut down on noise and allow Ke.B. to sleep.

S.B. and Ka.B. were taken into protective custody on July 3. On July 4, the medical examiner's office performed an autopsy on Ke.B. but did not issue a report until December 4. The pathologist ruled the death a homicide, and found that the cause of death was malnutrition with cerebral palsy a contributing factor.<sup>6</sup> At the time of his death, Ke.B. weighed 15.2 pounds, substantially less than he weighed when he was admitted to CHOC in February 2008.

*C. The Sections 342 and 387 Petitions Regarding S.B. and Ka.B.*

On July 9, CFS filed subsequent (§ 342) and supplemental (§ 387) petitions for S.B. and Ka.B. The petitions originally alleged that Mother had negligently caused the

---

<sup>6</sup> In the autopsy report, the pathologist wrote: "The decedent had a history of cerebral palsy and intermittent asthma. Autopsy examination shows a severely cachectic male that is far below 3rd percentile in weight and height for his age. There is an overall wasting of subcutaneous and internal fatty tissue, and there are contractures of all extremities. Internal examination also shows mild acute bronchopneumonia. He was admitted to the hospital in February 2008 for severe failure to thrive. His gastrointestinal work up in the hospital was unremarkable. He was able to take oral feeds and gain weight in the hospital. His discharge weight in February 2008 was 20.24 pounds, and his weight on autopsy was 15.2 pounds. Review of medical records reveals that the decedent did not receive consistent medical care. Based on the history, investigation, and autopsy findings, the cause of death is severe malnutrition due to neglect. Contributing factor is cerebral palsy. The mild bronchopneumonia did not cause his death, but is a result of the malnutrition. Manner of death is homicide."

death of Ke.B. by leaving him in the care of “irresponsible adults” (§ 300, subd. (f)) and the circumstances of Ke.B.’s death placed the other two boys at risk of abuse or neglect (§ 300, subd. (j)). The jurisdictional and dispositional hearings were continued several times due to delays in the issuance of the autopsy report. Both hearings were ultimately held on January 9, 2009. Meanwhile, CFS recommended reunification services for both parents.

Mother was ordered to drug test on July 10, but declined to do so, explaining she knew the test would be positive for marijuana because she had begun smoking soon after Ke.B.’s death. She tested positive for marijuana on July 31, August 28, and September 8.

On July 30, the social worker observed: “A culture exists in [Mother’s] home centering on partying, smoking marijuana cigarettes, loud music, and lots of visitors and socializing on the part of [Mother] and [Aunt]. [Mother] appears not to understand the seriousness of the home’s deficits or her lifestyle.” Still, the social worker noted: “[M]uch progress has been made . . . in the areas of obtaining beds, additional clothing, getting the gas turned on, and several other related areas of providing physical necessities or comforts.”

S.B. and Ka.B. were healthy, developing normally, and had adjusted well to the foster home in which they were placed on July 3. Mother was consistently maintaining her visitation schedule, and her weekly supervised visits with the boys were going well. S.B. enjoyed visiting Mother, and the children’s caretaker expressed “no concerns” about Mother during the visits. Ka.B. turned one year old in August 2008 and, like S.B., was

bonded to Mother. Father was living in Los Angeles but did not request that the children be placed with him.

In July, CFS drafted a reunification services plan for Mother, which included grief counseling, domestic violence counseling, and parenting education. She participated in grief counseling and domestic violence counseling, but said she was not benefiting from them because she was depressed. In October, she was again referred to grief counseling through another program, and CFS recommended adding random drug testing and outpatient substance abuse services to her services plan. On September 29, she missed a screening appointment for her pregnancy.

On October 1, Jane Kilbourne interviewed S.B. at the Children's Assessment Center. She described S.B. as a "bright and cheerful" child with appropriate eye contact and attention span. S.B. said he had two uncles, whom he later referred to as Mother's boyfriends, who would come to Mother's apartment, smoke cigarettes and "blunts" (marijuana cigarettes), watch television, and drink beer. The uncles once tried to put a "blunt" into Ke.B.'s mouth, but Ke.B. moved his head away. When S.B. would do something wrong at home, Mother would "whoop" him with a "hard, hard, hard, belt" on his legs, feet, and stomach. One of her boyfriends had hit him on the back of his head with a belt, and the other had hit him on his forehead with a white metal hanger.

On October 17, social worker Keith Kollman (SW Kollman) gave his rationale for recommending and continuing the parents' reunification services. He opined that, although Mother contributed to the death of Ke.B. by neglecting to follow through on his medical needs and by failing to provide a safe environment for him free of exposure to

drugs, S.B. and Ka.B. did not have special needs, and both parents were “showing signs” they could overcome the obstacles they had “put themselves into” and benefit from services.<sup>7</sup> On October 20, CFS filed amended petitions for S.B. and Ka.B.

*D. The January 9, 2009, Jurisdictional and Dispositional Hearing*

On January 9, 2009, a combined jurisdictional/dispositional hearing was held on the amended petitions. Regarding jurisdiction, the court found S.B. and Ka.B. were at risk because Mother associated with known substance abusers and had a substance abuse problem that affected her ability to parent. (§ 300, subd. (b).) The court further found that Ke.B. died while in Mother’s care, which would not have ordinarily occurred except as a result of her unreasonable or neglectful acts or omissions, including her failure to adequately maintain medical care for Ke.B. (§ 300, subds. (f), (j).)

Regarding disposition, CFS continued to recommend reunification services for Mother. The children’s counsel contested the recommendation. The children’s counsel called Mother as a witness, but on the advice of her counsel she invoked her Fifth Amendment right to remain silent regarding the events of July 3, the day Ke.B. died, and whether she had received any discharge instructions from CHOC. The record does not

---

<sup>7</sup> In an October 2008 status review report, SW Kollman wrote: “It is [my] opinion that [Mother] did contribute to the death of her special needs child [Ke.B.] based on the lack of follow through by [M]other for [his] medical needs and lack of ensuring a safe environment by failing to minimize potential risk factors due to the exposure of illegal substances in and around the family environment. However, [S.B. and Ka.B.] do not require the same level of medical attention that [Ke.B.] required . . . Both parents . . . are . . . showing signs they have the ability to overcome the obstacles they have put themselves into, by continuing to engage and benefit from the services offered to them and maintain the visits and relationship with the children.”

indicate whether, as of the date of the hearings, Mother had been charged with a crime in connection with the death of Ke.B.

Mother answered some questions regarding medical care and treatments she had sought or provided for her children. Ke.B. was diagnosed with asthma at age one. She sought treatment for his asthma at that time, he had not had an asthma attack since, and she had an albuterol machine for him. Ka.B. also had asthma, which was worse than Ke.B.'s, and she had a new albuterol machine for Ka.B. She denied allowing anyone to smoke cigarettes or marijuana around Ke.B. or Ka.B. S.B. had a heart murmur, his only medical condition.

Mother recalled that her original family maintenance plan required her to complete a 12-week parenting course and a 12-week domestic violence course. Since March 2008, she had attended four parenting and four domestic violence classes, but dropped out of both courses after Ke.B. died and had not re-enrolled in either since that time. She was currently enrolled in a substance abuse class and a grief counseling class, however. She had taken two classes in each area and had consistently been visiting the children. Mother admitting hitting S.B. with a belt, but denied leaving marks. She denied ever hitting Ka.B.

The court heard argument regarding whether Mother should receive reunification services in light of the court's finding that she had negligently caused the death of Ke.B. (§ 361.5, subds. (b)(4), (c).) Counsel for the children emphasized that the issue was not whether Mother should be punished, but whether services would serve the best interests of the children. Counsel expressed concern that Mother was not currently "on top of

[her] case plan,” which indicated she was not sufficiently motivated to regain custody of her boys or learn to properly care for them, and she had allowed people to be around them who were potentially damaging to their mental and physical health. Counsel acknowledged Mother had consistently visited the boys and both were attached to her, but she had the challenge of a new baby, due in March 2009, and her continuing grief over the loss of Ke.B. Father’s counsel joined the children’s request to not offer Mother reunification services.

On behalf of Mother, Mother’s counsel emphasized that Ke.B. “required a level of care that few of us will ever have to provide to anyone,” and before his death Mother was “doing her best with very limited resources and under incredibly difficult circumstances.” She urged the court not to “further injure this family by depriving [Ka.B. and S.B.] of their mother,” and the CFS reports had consistently indicated that the boys were very bonded to Mother. Mother’s commitment to the boys was demonstrated by her having consistently visited with them since they were removed from her care, and the boys were in very good health and doing well emotionally. County counsel told the court that CFS’s rationale for providing Mother services were in the CFS reports, which the court received into evidence, and submitted the matter based on the reports.

Following argument, the court ordered that reunification services be offered to both parents and specifically found it would be in the children’s best interests to offer reunification services to Mother. The court acknowledged that Mother had “significant issues” to address before the boys could be returned to her care, and it remained to be seen whether she was sufficiently motivated to address those issues. Still, the court

emphasized that the boys had been “reasonably well taken care of” and were clearly bonded to Mother. Accordingly, the court concluded that Mother should be given the opportunity to show she could resolve the problems that resulted in their removal from her care.

The court admonished Mother to work “seriously” on her case plan because she had only two more months—until March 2009, when the initial six-month review period ran—to show she could provide a safe home for the boys. Mother agreed to participate in additional service plan elements, including substance abuse testing at least twice each month, substance abuse outpatient services, and anger management services.

### III. DISCUSSION

The children claim, and Father agrees, that insufficient evidence supports the juvenile court’s order offering reunification services to Mother. We find the claim without merit.

#### A. *Section 361.5, Subdivisions (b)(4) and (c)*

Whenever a child is removed from the custody of a parent or guardian, subdivision (a) of section 361.5<sup>8</sup> directs that the court “shall” offer the parent or guardian reunification services, unless it finds by clear and convincing evidence that one or more exceptions or bypass provisions described in subdivision (b) apply. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 63-64 (*Ethan N.*); *In re Angelique C.* (2003) 113 Cal.App.4th 509, 516.) The general rule of subdivision (a) reflects a “strong preference for

---

<sup>8</sup> All further references to subdivisions are to subdivisions of section 361.5.

maintaining the family relationship if at all possible. [Citation.]” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) When, however, one or more of the exceptions or bypass provisions apply, “the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” (*Id.* at p. 478; see also *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

In its opening paragraph, subdivision (b) provides that reunification services “need not” be provided to a parent or guardian when the court finds that “any” of the exceptions or situations described in subdivision (b)(1) through (15) apply. (§ 361.5, subd. (b).) But in most of these situations, the “need not” proviso is effectively overridden by a statutory presumption against offering the parent reunification services. (*Id.*, subd. (c).) Specifically, when any of the situations described in subdivision (b)(3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) apply, subdivision (c) applies and provides that the court “shall not” offer the parent or guardian reunification services, “unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c).)

The juvenile court here found that Mother was a parent described in subdivision (b)(4). This exception applies when the parent or guardian seeking reunification services has “caused the death of another child through abuse or neglect.” (§ 361.5, subd. (b)(4).) The court specifically found that the death of Ke.B. would not have “ordinarily occur[ed]” but for Mother’s “neglectful acts or omission[s],” including her failure to “maintain adequate medical care” for the child.



When, as here, the court finds that a parent or guardian is described in subdivision (b)(4), the parent or guardian has the burden of affirmatively demonstrating that reunification—and therefore offering reunification services to the parent—would be in the child’s best interest. (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 66; § 361.5, subd (c).) The court has broad discretion in determining whether the parent or guardian has met this burden and therefore whether to offer the parent or guardian reunification services under subdivision (c). (*In re Angelique C.*, *supra*, 113 Cal.App.4th at p. 523.) An appellate court may not disturb the court’s subdivision (c) best interest determination absent a clear showing of an abuse of discretion. (*In re Angelique C.*, *supra*, at p. 523.)

In *Ethan N.*, the court listed several factors courts should consider in determining whether reunification would serve a child’s best interest, when the court has also found that the parent seeking reunification has caused the death of another child through abuse or neglect. (§ 361.5, subds. (b)(4), (c).) These are: (1) the “parent’s current efforts and fitness as well as the parent’s history,” (2) the gravity of the problem that led to the dependency, (3) the strength of the relative bonds between the child and the parent and the child and his or her caretakers, and (4) the child’s need for stability and continuity. (*Ethan N.*, *supra*, 122 Cal.App.4th at pp. 66-67.)

In *Ethan N.*, one-week-old Ethan was removed from his mother’s care after the juvenile court found the mother’s “active participation or neglect” had caused the death of her earlier-born infant, Charles, when Charles was only 39 days old. (*Ethan N.*, *supra*, 122 Cal.App.4th at pp. 59, 62.) The mother’s husband had repeatedly and severely abused Charles and was sentenced to life without parole for Charles’s murder. In

addition, the mother had previously lost parental rights to three other children, and had an extensive history of methamphetamine use. She failed to protect her three older children and Charles from abuse by her husband despite having received extensive services for the three older children. Following the death of Charles, the mother was convicted of possessing methamphetamine for sale and served time in jail. Thereafter, she completed a substance abuse program and was participating in outpatient services and Narcotics Anonymous meetings. (*Id.* at pp. 59-62.)

At a contested dispositional hearing, counsel for Ethan and the department urged the juvenile court not to offer the mother reunification services. Nevertheless, the juvenile court found reunification with the mother was in the best interest of Ethan and offered her services, in view of her “significant progress towards alleviating or mitigating the causes” of Ethan’s and the older children’s placement in out-of-home care. (*Ethan N. supra*, 122 Cal.App.4th at pp. 62-63, 65.)

The *Ethan N.* court held that the juvenile court’s best interest finding was not supported by substantial evidence and also constituted an abuse of discretion, because the court did not apply the “correct standards” in determining whether reunification with the mother was in the best interest of Ethan, and, as applied, none of these standards supported the court’s best interest finding. (*Ethan N., supra*, 122 Cal.App.4th at pp. 64-68.) The court first emphasized that the mother’s current efforts to alleviate the problems that led to the dependency of Ethan and her older children could not alone support a best interest finding for purposes of subdivisions (b)(4) and (c). This is because the “absence of a negative does not, in this context at least, make a positive. The parent responsible

for the previous death of another child must affirmatively show that reunification would be in the best interest of a surviving child.” (*Ethan N.*, *supra*, at p. 66.)

In considering the gravity of the problem that led to the children’s dependency, the court noted: “It is difficult to imagine any problem more grave than the previous death of another child caused by abuse or neglect.” (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 66.) And, while assuming, without deciding, that the death of another child by abuse or neglect “should not be weighed twice—first in connection with the . . . subdivision (b)(4) finding and again in determining best interest,” the court emphasized that the death of Charles was “combined with a long history of drug abuse, family violence, and the abuse and neglect of other children even after extensive reunification services had been provided” to the mother. (*Id.* at pp. 66-67, fn. omitted.)

Regarding the strength of the relative bonds between Ethan and the mother and Ethan and his caretakers, the court noted that undisputed evidence showed Ethan was bonded to his caretakers, not to the mother. Finally, regarding Ethan’s need for stability and continuity, which the court said was “[o]f paramount concern” in determining his best interest under subdivision (c), the court noted Ethan had been removed from the mother’s care within days of his birth and had since lived with a relative caretaker who was “ready and willing to provide long-term care” for him. (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 67.) The mother, on the other hand, was struggling with the ““lifetime process”” of overcoming her long-standing and severe substance abuse problem. (*Ibid.*) In these circumstances, the court emphasized that children such as Ethan “““should not be

required to wait until their parents grow up.’” (Ibid., citing *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73.)

Although the juvenile court in *Ethan N.* had apparently failed to consider any of the four factors listed and applied by the appellate court, the *Ethan N.* court did not remand the matter to the juvenile court for further consideration of its best interest finding in light of these factors. Instead, the court directed the juvenile court to enter an order terminating the mother’s services. (*Ethan N.*, *supra*, 122 Cal.App.4th at pp. 66-69.) The court emphasized that a parent seeking reunification with a child after the parent has caused the death of another child by abuse or neglect faces an “enormous hurdle” in demonstrating that reunification would serve the child’s best interest. (*Id.* at p. 68.) The court further observed that the cases in which the parent seeking reunification will meet his or her burden of affirmatively demonstrating that reunification will serve the child’s best interest “will be rare.” (*Id.* at pp. 68-69, citing *In re Alexis M.* (1997) 54 Cal.App.4th 848, 853, fn. 5 (*Alexis M.*).)

*Alexis M.* involved a father who was convicted of felony child abuse in connection with the death of his four-month-old son Alexander, and was sentenced to six years in prison. The father sought reunification with his infant daughter Alexis, born eight months after Alexander’s death. There was evidence of repeated trauma to Alexander’s body, and the father admitted dropping the infant and shaking him to keep him from crying. (*Alexis M.*, *supra*, 54 Cal.App.4th at pp. 850-852 & fn. 2.) The father was not offered reunification services for Alexis, and the *Alexis M.* court held it would have been an abuse of discretion to offer him services. (*Id.* at pp. 852-853.) The court reasoned that

the father’s “very serious acts of abuse” were “simply too shocking to ignore” in determining whether he should have been offered reunification services for Alexis (*id.* at pp. 850-851) and “[t]he enormity of a death arising out of felony child abuse swallows up almost all, if not all, competing concerns” (*id.* at p. 853, fn. 5; *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481, 492 [a father who brutally raped and murdered a 13-year-old girl when he was 15 years old was unable to show that reunification would be in the best interest of his child]).

#### B. *Analysis*

Applying the four considerations listed in *Ethan N.* to the facts of the present case, we conclude that substantial evidence supports the court’s finding that reunification with Mother, and therefore offering reunification services to Mother, would serve the best interests of S.B. and Ka.B.

##### 1. The Gravity of the Problems Leading to the Children’s Dependency

S.B., Ka.B., and Ke.B. were originally declared dependents in March 2008 based on Mother’s history of domestic violence with Father and her apparent inability to provide adequate medical care for Ke.B. during times of domestic stress. These problems directly underlie the court’s subsequent subdivision (b)(4) finding that Mother negligently caused the death of Ke.B. on July 3. Ke.B. died as a result of malnutrition, with cerebral palsy a contributing factor, and his death would not ordinarily have occurred had Mother maintained adequate medical care for him.

Then, following the death of Ke.B., it was discovered that Mother had a substance abuse problem—she tested positive for marijuana on several occasions between July and

September 2008—that affected her ability to parent, and she associated with “known substance abusers” which placed S.B. and Ka.B. at further risk of abuse or neglect. These problems were in addition to Mother’s failure to provide adequate medical care for Ke.B. and her domestic violence problems with Father.

As Mother points out, Ke.B. suffered from severe cerebral palsy and required a level of care few parents are ever required to provide to a child. And unlike Ke.B., S.B. and Ka.B. are healthy and developing normally, although Ka.B. has asthma. Still, the problems that led to the original and continuing dependencies of the children extend beyond Mother’s repeated failure to provide adequate medical care for Ke.B. Her continuing domestic violence, substance abuse, and other problems are serious and, if not addressed, threaten the ability of S.B. and Ka.B. to develop into stable, well-adjusted adults. (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 66.)

## 2. Mother’s Current Efforts, Fitness, and History

Mother’s participation in her services plans was minimal both before and after Ke.B. died on July 3. She attended only four of twelve parenting classes and four of twelve domestic violence classes through June 2008, pursuant to her family maintenance plan. Following the death of Ke.B., she attended two grief counseling and two substance abuse classes, but participated in no other services. This was attributed to her depression and grief over the death of the Ke.B. and the removal of S.B. and Ka.B from her care. Yet, Mother’s minimal participation began before Ke.B. died, and persisted through the time of the January 2009 hearing, even though she did not have custody of S.B. or Ka.B. for six months before the hearing.

Overall, the record indicates a lack of motivation or commitment on Mother's part to alleviate or mitigate the problems that led to the children's dependency. The juvenile court recognized this at the January 2009 hearing when it said: "I guess we will find out" whether Mother "is motivated and serious about dealing with [the issues that led to the children's dependencies]." On the other hand, Mother consistently visited S.B. and Ka.B. following their removal from her care, and the children's caretaker expressed "no concerns" regarding Mother's behavior during the visits. And in October 2008, SW Kollman opined Mother was "showing signs" she could overcome the problems that led to the children's dependencies, and benefit from services.

### 3. The Strength of the Relative Bonds Between the Children and Mother and the Children and Their Caretakers

It was undisputed that both S.B. and Ka.B. were bonded to Mother. Six-year-old S.B. was particularly bonded to her, and the infant Ka.B. responded to the sound of her voice and visual cues. There was no indication that either of the children were bonded to their nonrelative caretakers. At the January 2009 dispositional hearing, the juvenile court recognized that both children were bonded to Mother, and Mother's counsel urged the court not to "further injure this family by depriving [the children] of their mother." (Cf. *In re William B.* (2008) 163 Cal.App.4th 1220, 1229 [the child's bond with the parent, if any, cannot be the sole basis for a best interest finding under subdivision (c)].)

### 4. The Children's Need for Stability and Continuity

A child's need for stability and continuity is "[o]f paramount concern" in determining whether reunification with a subdivision (b)(4) parent is in the child's best

interest under subdivision (c). (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 67.) The court in *Ethan N.* was concerned with an infant child, Ethan, who was detained within days of his birth and who had since remained with the same relative caretaker who was “ready and willing to provide long-term care” for him. (*Ibid.*) The court was also concerned with a mother who had a long-standing methamphetamine problem and who was barely on the road to a “lifetime process” of recovery. (*Ibid.*)

In contrast, the present case involves two children, six-year-old S.B. and one-year-old Ka.B., both of whom are bonded to Mother and were raised by her until their removal from her care in July 2008. At the time of their removal, S.B. was six years old and Ka.B. was nearly one year old. S.B. knew Mother well and missed her. In addition, Mother’s substance abuse problem is apparently limited to marijuana and does not include methamphetamine or other drugs. Her domestic violence and other problems, though serious, likewise do not appear to be as intractable or severe as those of the mother in *Ethan N.*

## 5. Conclusion

In determining that reunification with Mother was in the best interests of S.B. and Ka.B., the juvenile court here effectively considered the factors enumerated in *Ethan N.*, including gravity of the problems that led to the children’s dependency, Mother’s current efforts to ameliorate those problems, her history and fitness, the children’s bonds with her and their caretakers, and, above all, the children’s need for stability and continuity. (*Ethan N.*, *supra*, 122 Cal.App.4th at pp. 66-67.)



Furthermore, substantial evidence supports the court's best interests finding. Although Mother negligently caused the death of Ke.B., it was highly unlikely that S.B. or Ka.B. would suffer a similar fate because they were healthy and developing normally. In addition, Mother's substance abuse, domestic violence, and other problems did not appear to be intractable, and the children were bonded to Mother. Given these circumstances, the children's need for stability and continuity required that Mother be afforded the opportunity to reunify with them. Thus here, the court did not abuse its discretion in determining that the best interests of the children included reunification with and therefore reunification services for Mother. (Cf. *In re D.F.* (2009) 172 Cal.App.4th 538, 547 [court did not err in finding lack of clear and convincing evidence that reunification would serve child's best interest, because court considered all "[a]ppropriate factors" and the evidence "raised little prospect" that the parent would successfully reunify with the child.].)

#### IV. DISPOSITION

The January 9, 2009, dispositional order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ King  
J.

We concur:

/s/ Ramirez  
P.J.

/s/ Gaut  
J.